



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,434	02/27/2004	J. Wesner Price	16920/09001	5697
27530	7590	07/28/2005	EXAMINER	
NELSON MULLINS RILEY & SCARBOROUGH, LLP 1320 MAIN STREET, 17TH FLOOR COLUMBIA, SC 29201			TRETTEL, MICHAEL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/789,434

Applicant(s)

PRICE, J. WESNER

Examiner

Michael Trettel

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-33 and 35 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 8-12, 14, 16, 22-28 and 34 is/are rejected.
- 7) ☒ Claim(s) 3, 5-7, 13, 15, 17-21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 1, 2, 4, 8 to 12, 14, 16, 22 to 24, 27, 28, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Dyer, Jr. (US 5,319,814). Dyer shows an innerspring mattress 500 in Figure 5 that has a padded cover 130. The cover 130 includes an upper foam section 120A that covers the entire upper surface of the mattress, and a supplemental foam section 120B that covers only the midsection of the mattress. The foam sections 120A, 120B are made from convoluted foam material with a density of 1 lb/cubic foot and an ILD of 30 (column 4, lines 6 to 17), with the sections having the convolutions facing one another so that they nest together. The foam section 120B is used to provide supplemental support to the midsection of the mattress, as described in column 2, lines 60 to 68 and column 3, lines 1 to 37. A polypropylene cover 130 is used to hold the foam padding sections 120 in place. Note that a second pair of foam sections 120A', 120B' can be placed upon the lower face of the mattress core, such that the mattress has the supplemental support on both sides of the mattress. The upper foam section 120A can be considered a first cushion top, and the supplemental foam section 120B can be considered a first insert. Note that Dyer states that the padded cushion cover construction can be used upon differing types of mattresses already known in the art (column 3, lines 24 to 30).

Claims 1, 2, 4, 8 to 10, 14, 23, 25, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Bonaddio (US 6,360,390). Bonaddio shows an edge support for a spring mattress 10. The mattress 10 includes an innerspring 12, an insulator scrim layer 21, and a quilted cover 16. The quilted cover 16 includes an outer ticking layer 27 and foam/fiber layers 25. Enclose between the quilted panel 16 and the scrim layer 21 is the edge reinforcement layer formed by foam layers 23', 32'. The layer 32' has a raised perimeter that bounds a recessed area into which the layer 23' is placed, with layer 32' being made of a firmer foam than the layer 23'. Read column 3, lines 3 to 23. The layer 23' is therefore smaller in area than the upper surface of the spring mattress, and can be considered to be a raised sleep zone. Note that the claims do not specify what the zone is raised relative to.

Response To Arguments

Applicant's arguments filed July 11, 2005 have been fully considered but they are not persuasive.

The applicant's comments with respect to claim 3 have been noted, it appears that claim 3 was inadvertently listed in the Summary as being rejected. This claim was not rejected over the prior art of record, and has now been listed and treated as being objected to only.

With respect to the arguments presented against the §102(b) rejection over Dyer, the applicant has not completely responded to the rejection as presented by the examiner. The rejection clearly emphasized the embodiment shown in Figure 5 of the Dyer patent, which shows the use of the foam insert 120b in combination with a spring core type mattress. The use of the

Art Unit: 3673

foam piece 120b in a waterbed type mattress is of no relevance to the rejection, since the rejection is not based upon that embodiment. As regards the arguments presented in the last paragraph of page 6, the rejection already specifically points out each and every element set forth in the claims. A mere allegation that Dyer does not show these elements is unpersuasive, without some showing of which particular elements are lacking. Furthermore, the argument presented that the foam section 120B of Dyer can not be considered to be the equivalent to the claimed raised sleep zone because it only covers a small part of a user's body is unpersuasive. There is no language present in the claims that state what the size of the raised section is relative to the remainder of the mattress structure, nor is there any language that state how it achieves the desired effect of preventing body impression. Any additional padding (such as Dyer's foam piece 120B) would inherently be capable of inhibiting the formation of body impressions in the mattress, since the padding would rebound to some degree after being unloaded after a user left the mattress. With respect to claim 8, the argument that Dyer does not show an insert positioned and configured to inhibit the formation of body impressions is unpersuasive for the reasons already set forth above, in essence the applicant's arguments are narrower than the claims since it appears that the applicant is reading more into the claim language than is actually present.

The argument presented against the §102(b) rejection over Bonnadio is unpersuasive for the same reasons. As set forth in the rejection, Bonaddio shows a layer 23' which is smaller in area than the upper surface of the spring mattress and which can be considered to be a raised sleep zone since the claims do not specify what the zone is raised relative to. The argument that the layer 23' can not inhibit body impressions fails to overcome the rejection because (as noted above) any type of padding would inherently be capable of inhibiting the formation of body

Art Unit: 3673

impressions in the mattress, since the padding would rebound to some degree after being unloaded. The layer 23' used in Bonaddio is made from a padding material and would inherently be capable of resisting the formation of body impressions in the mattress, even if the intended design purpose of the layer was for a differing reason.

Allowable Subject Matter

Claims 3, 5 to 7, 13, 15, and 17 to 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 29 to 33 and 35 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

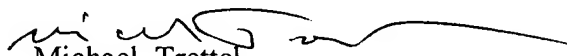
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3673

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is (571) 272-7052. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (571) 272-7052. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Michael Trettel
Primary Examiner
Art Unit 3673